

CALIFORNIA FISH AND GAME COMMISSION
STATEMENT OF PROPOSED EMERGENCY REGULATORY ACTION

Emergency Action to Amend Sections 27.82 and 27.83
Title 14, California Code of Regulations,
Re: Inseason Sport Groundfish, Conformance with Federal Regulations

I. Statement of Facts Constituting the Need for Emergency Regulatory Action

Emergency regulatory action by the Fish and Game Commission (Commission) is needed to bring California's 2003 sport fishing regulations (sections 27.82 and 27.83, Title 14, CCR) into conformance with recently amended federal groundfish rules scheduled to take effect September 1, 2003 (50 CFR Part 660). These regulatory changes will authorize recreational fishing for rockfish, lingcod, California scorpionfish, and ocean whitefish in ocean waters between 0 and 30 fathoms (180 feet) deep off southern California between Point Conception, Santa Barbara County, and the U.S.-Mexico border during the months of September through December of 2003. Fishing for these species is currently authorized in waters from 0 to 20 fathoms deep in this area during the period July through December of 2003.

The proposed regulatory action requires amendment of two Title 14 sections that describe management/conservation areas (described below) and the areas in which, and seasons when, the take of rockfish, lingcod, California scorpionfish, and ocean whitefish may occur off southern California. Editorial changes need to be made to the regulations to correct and clarify the area and boundaries of the California Rockfish Conservation Area applicable to the recreational fishery in southern California.

These changes need to be adopted on an emergency basis at the Commission's next regularly scheduled meeting of August 1-2, 2003. This is necessary because using the normal rulemaking process, involving noticing the proposed changes and adoption at the Commission's August 28-29, 2003 meeting, would not provide sufficient time for submission, review, and filing of the conforming regulations with the Secretary of State prior to September 1, 2003. This, in turn, would result in different state and federal regulations governing recreational fishing for rockfish, lingcod, and California scorpionfish in waters off southern California, creating confusion for the public and uncertainty regarding enforcement of groundfish regulations.

Under existing law, the federal Pacific Fishery Management Council (Council) manages and regulates over 80 species of groundfish including rockfish, lingcod, and California scorpionfish (a species closely related to rockfish) in waters off the states of California, Oregon, and Washington (Magnuson-Stevens Sustainable Fisheries Act, 16 U.S.C. 1851). Under California law, the Commission regulates sport fishing in all waters off California for species and fisheries not managed under federally adopted fisheries

management plans (FMPs), including fisheries for ocean whitefish that are found in association with rockfish and lingcod. The Commission also acts to adopt changes to its sport fishing regulations to conform with federal fishery rules governing species managed under federally approved FMPs (to ensure that state and federal rules for these species are consistent and enforceable) (Fish and Game Code Section 200 et seq.).

Stock assessments completed by federal and state scientists for lingcod, bocaccio, canary, cowcod, and yelloweye rockfishes [generally found in waters greater than 20 fathoms (120 feet) deep] have determined that these species are overfished based on federal fisheries management criteria, thereby requiring the implementation of rebuilding plans for each species. To rebuild these stocks as required under federal law, a total annual harvest level, or optimum yield (OY), is adopted for each overfished species of rockfish and lingcod. The annual OY for each species or species group is also allocated between the recreational and commercial fisheries. Once an allocation or OY is taken (caught) by a fishery, the fishery may be closed for the balance of the year. Federal fishery rules for groundfish are set based on rebuilding criteria and consideration of input by groundfish scientific advisors, industry representatives, and the general public prior to the beginning of the fishing (calendar) year and “inseason” as necessary through the calendar year. The current proposed regulation changes are “inseason” adjustments to the fishery regulations.

To keep recreational catch levels for overfished stocks of groundfish within the annual OYs determined necessary for rebuilding of each species, the Council has adopted increasingly restrictive season and area closures on rockfish and lingcod harvests in recent years that have severely reduced the times when, and areas where, recreational fishing for rockfish, lingcod, and associated species (California scorpionfish and ocean whitefish) may occur. Area and season closures to recreational fishing for rockfish and lingcod in southern California waters (south of Point Conception, Santa Barbara County) in recent years have been primarily for the purpose of protecting bocaccio and cowcod rockfishes, while closures immediately to the north of Point Conception have been primarily for the protection of bocaccio, canary, and yelloweye rockfishes.

For purposes of regulating and rebuilding rockfish and lingcod in waters off California and Oregon, ocean waters have been divided into management areas designated in federal regulations as North and South of 40°10' North Latitude (near Cape Mendocino, Humboldt County) (50 CFR Part 660). Similar management areas have been established and designated in state regulations as the Northern, Central, and Southern Rockfish and Lingcod Management areas located, respectively, off northern, central, and southern California (Section 27.82, Title 14, CCR). California's Northern Rockfish and Lingcod Management Area coincides with that part of the federal management area off California lying north of 40°10' North Latitude (this federal management area extends northward into Oregon). California's Central and Southern Rockfish and Lingcod

Management Areas together coincide with the federal management area lying south of 40°10' North Latitude to the U.S.-Mexico border. Waters affected by this regulatory action are restricted to California's Southern Rockfish and Lingcod Management Area that includes ocean waters between Point Conception, Santa Barbara County, and the U.S-Mexico border. Within the Southern Rockfish and Lingcod Management Area there also are two areas designated in regulation as the Cowcod Conservation Areas where fishing for rockfish and lingcod is prohibited to protect cowcod (Section 27.82, Title 14, CCR).

Also, during 2002, California created the California Rockfish Conservation Area (CRCA) that extends from 40°10' North Latitude, south to the U.S-Mexico border in waters 20 fathoms and deeper (Section 27.83, Title 14, CCR). The CRCA was created to reduce the bycatch (incidental take) of overfished groundfish species by recreational fishing gear not specifically directed at these species.

During 2003, existing regulations generally prohibit the sport take of rockfish, lingcod, California scorpionfish, and ocean whitefish, with the exceptions described below in the Central and Southern Rockfish and Lingcod Management Areas (from 40°10' North Latitude near Cape Mendocino, Humboldt County, south to the U.S.-Mexico border), in the two Cowcod Conservation Areas, and in the CRCA. Exceptions to the above closures authorize sport fishing for rockfish (not including bocaccio, canary, cowcod, and yelloweye rockfish), lingcod, California scorpionfish, and ocean whitefish in ocean waters less than 20 fathoms deep in the Central and Southern Rockfish and Lingcod Management Areas during the months of July through December of 2003 (Section 27.82, Title 14, CCR). Also, in the Southern Rockfish and Lingcod Management Area (waters from Point Conception, Santa Barbara County, south to the U.S.-Mexico border), an exception is provided that authorizes California scorpionfish to be taken in waters less than 20 fathoms deep along the mainland coast and around offshore islands and rocks during January and February and in specified waters between 20 and 50 fathoms deep in an area off of southern Los Angeles and Orange counties during the months of July through December of 2003.

Ocean whitefish are not a Council managed groundfish, but the take of ocean whitefish is prohibited by the Commission in the same areas and during the same time periods as rockfish, lingcod, and California scorpionfish. Ocean whitefish frequent the same waters as rockfish, lingcod, and California scorpionfish. Therefore, prohibiting the take of ocean whitefish during rockfish closures helps avoid the incidental take and discarding (dead) of overfished rockfish species should anglers attempt to specifically target ocean whitefish during rockfish closures.

Changes being proposed in California's existing sport fishing regulations would make California's regulations governing the take of rockfish, lingcod, and California scorpionfish consistent with changes in federal regulations approved by the Council in

June of this year that are scheduled to become effective September 1, 2003. The regulatory changes recently approved by the Council and being proposed to be adopted by the Commission would authorize recreational fishing for rockfish (not to include bocaccio, canary, cowcod, and yelloweye rockfishes) and for lingcod, California scorpionfish, and ocean whitefish in ocean waters shoreward of a line approximating the 30 fathom depth contour between Point Conception, Santa Barbara County and the U.S.-Mexico border (not to include waters within the California Cowcod Conservation Areas) for the months of September through December of 2003. This expanded depth range proposed to be adopted for the September through December time period in waters off southern California would increase the range of depths that fishermen could fish for these species from the currently authorized 0-20 fathoms (0-120 feet) to 0-30 fathoms (0-180 feet) of water.

In support of this action, the status of bocaccio was recently reassessed by the Council's Groundfish Management Team (GMT) and was found to have improved since the last assessment for this species was completed one year ago. The GMT determined that the bocaccio catch during 2003 could be increased slightly (by 1.27 metric tons). This provided for some additional acceptable bycatch of bocaccio as a part of the Council authorization for sport fishing for rockfish, lingcod, California scorpionfish, and ocean whitefish in waters out to 30 fathoms deep during September through December off southern California. The Council determined that this action would not hinder continued rebuilding efforts for bocaccio. The National Oceanic and Atmospheric Administration (NOAA) Fisheries (formerly the National Marine Fisheries Service and the regulatory agency for federal fishery regulations) is amending existing federal regulations to be effective on September 1, 2003.

The Council's action, followed by Commission conforming action, will provide increased recreational fishing opportunity in the Southern Rockfish and Lingcod Management Area, and is expected to aid a segment of the commercial passenger fishing vessel (CPFV) industry in southern California that targets rockfish and lingcod. The fishing activities of this segment of the CPFV industry have been significantly constrained in recent years by increasing restrictions on recreational fishing for groundfish. Commission conformance with the federal changes in groundfish sport fishing regulations will provide for a clearer understanding of sport fishing rules by both the public, and state and federal fisheries management agencies that enforce the regulations

The Council's action to increase the area where fishing may occur for rockfish and associated species was limited to waters off southern California because of continued concerns for impacts to canary rockfish if directed fishing on rockfish and lingcod were allowed in waters deeper than 20 fathoms to the north of Point Conception (in the Central Rockfish and Lingcod Management Area).

Also, some inconsistencies in existing state and federal regulations were noted during review of the proposed regulation changes. The first inconsistency involves the current boundaries of the CRCA as adopted in 2002 by the Commission. The description of the CRCA in Section 27.83, Title 14, CCR, includes a description of a seaward (western) boundary for the area that is located in waters 150 and 250 fathoms deep for waters to the south and north of Point Reyes, Marin County, respectively. Federal regulations describing this closure area include no seaward (western) boundary for the recreational fishery, and therefore subsections 27.83(a)(1) and (a)(2) need to be amended to eliminate reference to the “seaward waypoints specified in federal regulations....” This will make the state and federal descriptions of the CRCA closure area consistent for the recreational fishery.

The second inconsistency involves language in Section 27.83, Title 14, CCR, that includes the Cowcod Conservation Areas within the California Rockfish Conservation Areas [subsection 27.83(a)(3)]. Federal regulations do not include the Cowcod Conservation Areas within the federal Rockfish Conservation Areas. Therefore, subsection 27.83(a)(3) needs to be amended to state that the CRCA, for purposes of describing this depth zone, does not include the Cowcod Conservation Areas. This is needed to clarify in regulation that fishing for rockfish, lingcod, California scorpionfish, and ocean whitefish is not authorized in the CCAs in waters 20 to 30 fathoms in depth, as it will be in the CRCA during September through December of 2003.

Correcting these inconsistencies will clarify for anglers and enforcement staff the correct area of the CRCA and help prevent the take and discarding of cowcod in the CCAs during September through December of 2003 when fishing for rockfish and lingcod is authorized elsewhere in waters out to 30 fathoms deep off southern California.

Minor editorial changes are also proposed to improve the clarity and consistency of the regulations. An editorial change is needed to correct the name of the Cowcod Conservation Areas in subsection 27.82(a), Title 14, CCR, which was inadvertently adopted as the “Cowcod closure areas” in this section. This section is amended to be consistent with the federally adopted name for these areas, and the name used for these areas in subsection 27.83(a)(3), Title 14, CCR, [to become 27.83(a)(2)].

II. Alternatives

In view of information currently possessed, no reasonable alternative considered would be more effective in carrying out the purposes for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

III. Impact of Regulatory Action:

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The proposed changes should increase recreational fishing opportunities for the public. This, in turn, is expected to aid CPFV owners and operators to the extent that the larger area of water available for catching rockfish, lingcod, California scorpionfish, and ocean whitefish attracts additional anglers to these businesses in southern California.

- (b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California: None.

- (c) Cost Impacts on a Representative Private Person or Business:

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.

- (e) Nondiscretionary Costs/Savings to Local Agencies: None.

- (f) Programs mandated on Local Agencies or School Districts: None.

- (g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4: None.

- (h) Effect on Housing Costs: None

IV. Plain English Policy Statement:

It has been determined that the adoption/amendment of these regulations may affect small businesses. The Commission has drafted the regulations in Plain English pursuant to Government Code sections 11342(e) and 11346.2(a)(1).

V. Authority and Reference:

The Fish and Game Commission proposes this emergency action pursuant to the authority vested by Section 240 of the Fish and Game Code and to implement, interpret, or make specific Section 240 of said Code.

VII. Section 240 Finding:

Pursuant to Section 240 of the Fish and Game Code, the Commission made the finding that the adoption of this regulation is necessary for the immediate preservation of the public peace, health and safety, or general welfare.

Informative Digest (Plain English Overview)

Under existing law, the federal Pacific Fishery Management Council (Council) manages and regulates over 80 species of groundfish including rockfish, lingcod, and California scorpionfish (a species closely related to rockfish) in waters off the states of California, Oregon, and Washington pursuant to the Magnuson-Stevens Sustainable Fisheries Act (16 U.S.C. 1851). Under California law, the Fish and Game Commission (Commission) regulates sport fishing in waters off California for species and fisheries not managed under federally approved fisheries management plans (FMPs), including fisheries for ocean whitefish that are found in association with rockfish and lingcod (Fish and Game Code Section 200 et seq.). The Commission also acts to adopt changes to sport fishing regulations in order that state regulations remain consistent with federal fishery rules governing species managed under federal FMPs.

Under existing state regulations, the sport take of rockfish, lingcod, California scorpionfish, and ocean whitefish is generally prohibited during 2003 in ocean waters from 40°10' North Latitude (near Cape Mendocino, Humboldt County) south to the U.S.-Mexico border (with exceptions described below). This area encompasses the Central and Southern Rockfish and Lingcod Management Areas. Existing regulations that restrict sport fishing for rockfish, lingcod, California scorpionfish, and ocean whitefish also apply in two Cowcod Conservation Areas (two areas of ocean waters off southern California), and in the California Rockfish Conservation Area (CRCA) extending from 40°10' North Latitude, near Cape Mendocino, south to the U.S.-Mexico border in waters 20 fathoms and greater in depth (sections 27.82 and 27.83, Title 14, CCR).

Under existing regulations, the following exceptions exist to the current prohibition on take of rockfish, lingcod, California scorpionfish, and ocean whitefish south of 40°10' North Latitude: 1) regulations authorize recreational fishing for rockfish (not including bocaccio, canary, cowcod, and yelloweye rockfishes) in ocean waters less than 20 fathoms deep south of 40°10' North Latitude during the months of July through December; and 2) California scorpionfish may be taken in waters less than 20 fathoms deep along the mainland coast and around offshore islands and rocks during January and February, and in waters 20 to 50 fathoms deep in an area off southern Los Angeles County and Orange County during July and August of 2003 in the Southern Rockfish and Lingcod Management Area.

Changes being proposed in California's existing sport fishing regulations would make California's regulations governing the take of rockfish, lingcod, and California scorpionfish consistent with changes in federal regulations approved by the Council in June of this year to become effective September 1, 2003. Federal regulatory changes proposed to be adopted by the Commission would authorize recreational fishing for rockfish (not to include bocaccio, canary, cowcod, and yelloweye rockfishes), and for lingcod, California scorpionfish, and ocean whitefish in ocean waters from 0 to 30 fathoms (0 to 180 feet) deep in the Southern Rockfish and Lingcod Management Area

between Point Conception, Santa Barbara County, and the U.S.-Mexico border (not to include waters within the California Cowcod Conservation Areas), during the months of September through December of 2003. This expanded depth range proposed to be adopted for the September through December time period in waters off southern California would increase the range of depths that fishermen could fish for these species from the currently authorized 0-20 fathoms (0-120 feet) to 0-30 fathoms (0-180 feet).

Changes would also address two inconsistencies between existing state and federal regulations regarding the seaward (western) extent of the California Rockfish Conservation Area (CRCA), and the exclusion of the Cowcod Conservation Areas (CCAs) from the CRCA. The description of the CRCA in Section 27.83, Title 14, CCR, incorrectly includes a description of a seaward (western) boundary located in waters 150 and 250 fathoms deep for southern California and central California, respectively. Federal regulations describing this closure area include no seaward (western) boundary for the recreational fishery. Therefore, the existing state regulatory language [subsections 27.83(a)(1) and (a)(2)] is proposed to be changed to eliminate reference to the "seaward waypoints specified in federal regulations" to clarify that there is no western boundary for the CRCA for sport fishing purposes. This will make the state's description of the CRCA consistent with the description in federal regulations for the sport fishery.

Also, existing state regulatory language incorrectly includes the Cowcod Conservation Areas within the California Rockfish Conservation Areas. Federal regulations do not include the Cowcod Conservation Areas within the federal Rockfish Conservation Areas. Therefore, a regulatory change to Section 27.83 needs to be made to state that the CRCA, for purposes of describing this depth zone, does not include the Cowcod Conservation Areas. This will clarify in regulation that fishing for rockfish, lingcod, California scorpionfish, and ocean whitefish will not be authorized in the CCAs in waters 20 to 30 fathoms in depth, as it will be in the CRCA during September through December of 2003.

The status of bocaccio rockfish was recently reassessed and was found to have improved since the last assessment for this species was completed one year ago. The results of this recent stock assessment allowed the Council to accommodate recreational fishing for rockfish and associated lingcod, and California scorpionfish in ocean waters 30 fathoms or less in depth in the area from Point Conception, Santa Barbara County, south to the U.S.-Mexico border, not to include the CCAs, for the period September through December. The intent is that the federal and these conforming state regulations become effective on September 1, 2003.

These emergency regulations are expected to provide overall increased recreational fishing opportunity in the Southern Rockfish and Lingcod Management Area, and benefit a segment of the commercial passenger fishing vessel (CPFV) industry in southern California that targets rockfish and lingcod. This industry has been adversely

impacted by increasing restrictions on recreational fishing opportunities for groundfish during recent years that are needed to help rebuild overfished stocks of rockfish and lingcod.

Additional minor editorial changes are also proposed to improve the clarity and consistency of the regulations. An editorial change is needed to correct the name of the Cowcod Conservation Areas in subsection 27.82(a), Title 14, CCR, which was inadvertently adopted as the “Cowcod closure areas” in this section. This section is amended to be consistent with the federally adopted name for these areas, and the name used for these areas in subsection 27.83(a)(3), Title 14, CCR, [to become 27.83(a)(2)].